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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue

Addendum

Mission to Montenegro* **

Summary

The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression undertook an official visit to Montenegro from 11 to 17 June 2013.

Montenegro has repeatedly stated its commitment to protect and promote the right to freedom of expression. Over recent years, the country has enhanced its legal framework; for example, it decriminalized defamation in 2011. However, implementation of the normative framework has been unsatisfactory at times.

The Special Rapporteur was deeply concerned by reports of violence and threats against journalists and the media, often targeting those investigating corruption and criminal activity. He was troubled, in particular, by the limited investigations into some of those attacks and the consequent lack of accountability.

With regard to the independence of the media, the Special Rapporteur expressed concern about the continuing Government ownership of a print newspaper and its financial support, although this has been prohibited by law since 2002. He also noted that a worrying level of polarization among media groups was impairing efforts towards self-regulation.

* Late submission

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The Special Rapporteur expressed additional concerns with regard to the implementation of the recently adopted norms on access to information and on the responses to incitement to hatred. In particular, the Special Rapporteur noted with dismay the recent reports on attacks against representatives of the lesbian, gay, bisexual and transgender (LGBT) community.

Throughout his visit, the Special Rapporteur noted with appreciation that the authorities acknowledged most of the concerns identified in the present report and demonstrated great openness towards further revising norms and practices to better respond to these challenges. The report concludes with a set of recommendations.

Annex

[*English only*]

Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, on his mission to Montenegro (11–17 June 2013)

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I. Introduction

1. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, carried out an official mission to Montenegro from 11 to 17 June 2013, at the invitation of the Government. The visit was undertaken pursuant to his mandate to assess compliance with international standards on the right to freedom of opinion and expression.

2. During his visit, the Special Rapporteur met with the Prime Minister, Mr. Milo Đukanović; the Deputy Prime Minister and Minister for Foreign Affairs and European Integration, Mr. Igor Lukšić; the Deputy Prime Minister and Minister of Information Society and Telecommunications, Mr. Vujica Lazović; the Minister of Internal Affairs, Mr. Raško Konjević; the Minister of Human and Minority Rights, Mr. Suad Numanović; and the Deputy Minister of Culture, Mr. Željko Rutović.

3. He also met with the Acting Director of the Police, the Deputy Chief State Prosecutor, the President of the Supreme Court of Montenegro, the President of the Constitutional Court, the Parliamentary Committee for Human Rights and Freedoms, the Director of the Agency for Electronic Media, and the Ombudsman's Office.

4. In addition, the Special Rapporteur met with civil society organizations, media groups and journalists, the academic community, as well as representatives of international organizations based in the country.

5. The Special Rapporteur extends his thanks to the Government of Montenegro for the invitation and the cooperation extended to him before and during the visit. He also wishes to express his gratitude for the outstanding support provided to him throughout his visit by the United Nations country team. Finally he is particularly thankful for the information received from civil society representatives, in particular from activists and journalists directly engaged in the promotion of freedom of expression in the country.

II. International legal standards

6. In carrying out his assessment of the situation regarding the right to freedom of opinion and expression in Montenegro, the Special Rapporteur has been guided by the relevant international legal standards. In this case, the most pertinent treaties are the International Covenant on Civil and Political Rights, which was ratified by the country on 23 October 2006 and, at the regional level, the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which Montenegro assumed by succession.

7. The analysis of the Special Rapporteur in the present report has been guided in particular by article 19 of the International Covenant on Civil and Political Rights and article 10 of the European Convention on Human Rights. He has also been guided by other relevant declarations, resolutions and guidelines of various United Nations bodies, including general comment No. 34 (2011) of the Human Rights Committee on article 19: freedoms of opinion and expression; resolutions 16/4 and 21/12 of the Human Rights Council; and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.

III. Domestic legal framework

8. At the domestic level, the right to freedom of opinion and expression is provided for in the Constitution of Montenegro,[1] as well as additional national legislation. Article 47 of the Constitution, establishes that: "Everyone shall have the right to freedom of expression by speech, writing, picture or in some other manner. The right to freedom of expression may be limited only by the right of others to dignity, reputation and honour and if it threatens public morality or the security of Montenegro."

9. Furthermore, the Constitution has specific provisions concerning the:

(a) Freedom of the press (art. 49): "Freedom of press and other forms of public information shall be guaranteed. The right to establish newspapers and other public information media, without approval, by registration with the competent authority, shall be guaranteed;"

(b) Prohibition of censorship (art. 50): "There shall be no censorship in Montenegro. The competent court may prevent dissemination of information and ideas via the public media if required so to: prevent invitation to forcible destruction of the order defined by the Constitution; preservation of territorial integrity of Montenegro; prevention of propagating war or incitement to violence or performance of criminal offences; prevention of propagating racial, national and religious hatred or discrimination;"

(c) Right to access information (art. 51): "Everyone shall have the right to access information held by the State authorities and organizations exercising public authority. The right to access to information may be limited if this is in the interest of: the protection of life; public health; morality and privacy; carrying of criminal proceedings; security and defence of Montenegro; foreign, monetary and economic policy;"

(d) Right to freedom of assembly (art. 52): "The freedom of peaceful assembly, without approval, with prior notification of the competent authority shall be guaranteed. The freedom of assembly may be temporarily restricted by the decision of the competent authority in order to prevent disorder or execution of a criminal offence, threat to health, morality or security of people and property, in accordance with the law."

10. The Constitution of Montenegro also directly incorporates international agreements into domestic law. Article 9 provides that: "The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate relations differently from the national legislation." Article 145 further stipulates that domestic laws "shall be in conformity with the Constitution and confirmed international agreements, and other regulations shall be in conformity with the Constitution and the law."

11. Additional relevant legal instruments provide regulations regarding, inter alia, the work of the media, the activities of public and private broadcasting services, electronic media and access to information held by public bodies.

12. The Media Law,[2] enacted in 2002, establishes general principles and provisions on which the media system is based. It prohibits censorship and establishes that Montenegro

[1] Adopted on 19 October 2007, and available in English translation on the legislationonline.org website, supported by the Organization for Economic Cooperation and Development (OECD): http://www.legislationline.org/download/action/download/id/929/file/b4b8702679c8b42794267c691488.htm/preview.

[2] Available at: http://minoritycentre.org/sites/default/files/law-media-me.pdf.

shall provide and guarantee freedom of information at the level of the standards as contained in the international documents on human rights and freedoms (art. 1). Article 23 of the law prohibits the publication of "information and opinions that instigate discrimination, hatred or violence against persons or group of persons based on ... race, religion, nation, ethnic group, sex or sexual orientation". The Media Law also establishes a right for individuals to demand publication of a correction or reply "without any modification or addition" (art. 28) if requested within 30 days of publication of material which offends them, with few exceptions. Publishers failing to do so are subject to judicial review.

13. The Law on Electronic Media, enacted in 2010, regulates the process of licensing of the transmission and broadcasting of radio and television signals; as well as monitoring compliance with broadcasting standards. It also establishes the Agency for Electronic Media as an independent regulatory body with the tasks of adopting the Broadcasting Development Strategy and monitoring audiovisual broadcasters. It further provides for the establishment of a public broadcaster, which is partially funded by the national Government.

14. Public broadcasting activities are regulated by the Law on Public Broadcasting Services which, inter alia, defines the mechanisms for financing and managing these services, including the responsibilities and composition of the Radio Television Montenegro Council.

15. The Law on Digital Broadcasting, enacted in 2011, regulates methods and conditions for digital terrestrial broadcasting as well as the procedure of switch-over from analogue to digital broadcasting.

16. Finally, the Freedom of Information Act, enacted in 2012, establishes the right to access information held by public bodies, public companies and other entities performing public powers.

IV. Situation of the right to freedom of opinion and expression in Montenegro

A. General overview

17. Over recent years, Montenegro has reformed laws and introduced new legal instruments with the aim of enhancing the protection of the right to freedom of expression in the country. The implementation of these improved norms has, however, been unsatisfactory at times. The decriminalization of libel and defamation in 2011, for example, was a remarkable step. Nonetheless, the fines levied by courts are still high on occasion, and civil defamation lawsuits seem to disproportionately target some sectors of the media considered to be critical of the authorities.

18. The Special Rapporteur was very concerned by the frequent reports on violence and intimidation against journalists and media outlets, often victimizing investigative journalists reporting on corruption and criminal activity. He was in particular concerned by reports on the inadequate investigation of well-known episodes and the lack of clarification of the potential involvement of State officials.

19. Montenegro has a relatively diverse media landscape: with a population of around 650,000 inhabitants, there are reportedly 23 television stations, 53 radio stations, 4 daily,

3 weekly and 30 monthly newspapers operating.[3] The small market and its financial constraints are, however, considered to easily expose the media to pressure from business leaders and the Government. In this regard, the direct or indirect interference of the Government in the media is an additional reason for concern. In particular, the Special Rapporteur was concerned by the continued State ownership of the daily newspaper *Pobjeda* as it seems to contribute to the politicization of the very polarized media. He notes that this hostility impairs efforts towards self-regulation and the establishment of journalist associations as well.

20. Montenegro recently adopted the Law on Free Access to Information establishing important instruments to facilitate public access to information, in line with international standards. However, the adoption of this new norm must be complemented by efforts to enhance the capacity of officials to comply with requests and sensitize civil society.

21. Finally, the Special Rapporteur was concerned by reports on discriminatory statements in the media and among the political leadership. In particular his attention was drawn to the recently reported attacks against representatives of the lesbian, gay, bisexual and transgender (LGBT) community.

B. Issues of concern

1. Violence and intimidation against journalists

22. One of the most important roles played by journalists in society is the investigative reporting function, where allegations of wrongdoing, whether by the State or by private individuals, are investigated and publicly debated. This vital function requires journalists to be, and publicly perceived to be, effectively protected by the State. Without such protection, journalists may lack the confidence to investigate powerful interests, and violence, or the threat of violence, may be used by some to deter the media from further investigating very relevant controversial stories related to any form of wrongdoing.

23. During his visit, the Special Rapporteur was extremely concerned by multiple reports of intimidation and violence against journalists and media outlets in Montenegro. Civil society and journalist representatives indicated that common targets are allegedly journalists investigating issues such as organized crime or alleged links between organized crime and the authorities.[4] Reports have also underlined that many attacks have not been properly investigated. On the other hand, the authorities tended to relate most of these events to ordinary criminal reactions to the media coverage.[5]

24. In the six months following the visit of the Special Rapporteur to the country he received information on 13 alleged episodes of violence and intimidation against the Montenegrin media. The Government informed that investigations on these allegations are ongoing, and that proceedings were initiated in 5 of these cases by filing criminal and misdemeanour charges against 13 individuals. In a recent study, 30 acts of intimidation and violence, including threats, stoning of premises, destruction of property, physical assaults,

[3] Network for Affirmation of NGO Sector (MANS), "How much does it cost for a journalist to be critical in Montenegro?", p. 5, available at: http://www.mans.co.me/en/wp-content/uploads/fai/FreedomOfExpression-Internship.pdf.

[4] Amnesty International, "Montenegro: submission to the UN universal periodic review" (1 July 2012), Fifteenth session of the Working Group on the Universal Periodic Review (January-February 2013), p. 3.

[5] Swedish Bar Association and the New York City Bar Association, "Independent legal mission to study press freedom in Montenegro" (10 May 2013), p. 17.

planting of explosives, and murders of journalists were identified from May 2004 to January 2014.[6] The study found that victims were mostly the media or individuals critical of the Government. The report also noted that investigations were conducted poorly and typically without result. Difficulties in coordination between the State Prosecutor's Office and the police often impaired the prosecution. In cases partially or fully concluded, despite the conviction of some perpetrators or accomplices, there were serious concerns about the lack of identification of persons who had ordered the attacks.[7]

25. Concerns about violence against journalists in Montenegro have been repeatedly voiced by international entities. In 2013, the progress report of the European Commission on the accession process of Montenegro noted that: "Despite recent convictions and investigations into cases of violence against the media, a number of old and recent cases of threats and violence against journalists, including attacks against media property, need to be solved by stepping up investigations and prosecutions. The recent rise of cases is a cause for concern."[8] The Organization for Security and Cooperation in Europe (OSCE) Representative on Freedom of the Media has also expressed concern over attacks against the Montenegrin media.[9]

26. Possibly the most notorious unresolved case of violence against a journalist is the murder in 2004 of publisher and editor-in-chief of the daily newspaper *Dan*, Mr. Duško Jovanović. Mr. Jovanović was assassinated by automatic gunfire from a vehicle following a long history of threats received. He had filed a complaint against a member of a criminal syndicate in 2002 for making threats, and had reported to the *Beta* news agency in the same year that he had received a letter warning him that "top-ranked officials at the Ministry of the Interior [were] planning his assassination".[10] Numerous defamation claims had allegedly been made against his newspaper for reporting on the involvement of top officials in cigarette smuggling and trafficking in women in Montenegro. Following his shooting, one person was convicted for being an accomplice to his murder through evidence showing that he had been involved in the purchase of a vehicle and weapons used in the crime, and that he had been present in the vehicle in which the shooting took place. To date, the perpetrator as well as those who ordered the killing have not been found.

27. The murder of Mr. Jovanović raised widespread attention and its lack of clarification continues to be noted by the international community.[11] The episode had already been addressed in the report on the visit of the previous Special Rapporteur to Serbia and Montenegro in 2004,[12] which concluded by recommending that law enforcement agencies and judicial authorities speedily conclude investigations on the assassination of media professionals. During the current visit, interlocutors both within Government and civil society made reference to the lack of clarification of this particular case. The failure of the authorities to define the exact circumstances of Mr. Jovanović's killing 10 years after it took place, and in particular, those who ordered his assassination is taken by various journalists and civil society representatives as the main example of the lack of accountability for attacks against the press.

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[6] Human Rights Action, "Prosecution of attacks on journalists in Montenegro" (31 January, 2014), p. 3.

[7] Ibid.

[8] Montenegro 2013 Progress Report, available at: http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf, pp. 9–10.

[9] See, for example, "OSCE media freedom representative alarmed by another attack on newspaper in Montenegro", available at: http://www.osce.org/fom/111266.

[10] "Prosecution of attacks on journalists in Montenegro" (see footnote 6 above), p. 8.

[11] See http://www.osce.org/fom/102052.

[12] E/CN.4/2005/64/Add.4, para. 73.

28. Another notorious case that remains unresolved is the assassination of Srdan Vojičić in 2006. Mr. Vojičić was the driver of the Montenegrin poet and writer Jevrem Brković (who wrote about the relationship between organized crime and public officials). He died while reportedly trying to protect Mr. Brković who was being beaten with metal bars by three masked assailants. No one has ever been charged in connection with these attacks.

29. The daily newspaper *Vijesti* has been repeatedly affected by attacks against its property. On 26 December 2013, an explosive detonated outside the main office of the newspaper, below the window of the office of its editor-in-chief. On 13 February 2014 a vehicle owned by *Vijesti* was burned in an apparent arson attack. Similar arson attacks had been committed on *Vijesti* vehicles on at least three earlier occasions: on 14 July 2011 and twice on 28 August 2011. To date, two individuals have been prosecuted in relation to the event of 26 December, and no suspects have been identified in the other case.

30. Journalists working for *Vijesti* have been directly attacked on repeated occasions. In September 2007, Željko Ivanović, one of the founders of the newspaper, was reportedly beaten by two men outside a restaurant where the newspaper was celebrating its tenth anniversary. Two men were later convicted in this case, but Mr. Ivanović maintained that the two convicted men bore no resemblance to those who had actually attacked him; he also indicated that he suspected the involvement of the authorities.[13] In August 2009, after photographing the Mayor of Podgorica's illegally parked car, an editor and a photojournalist from *Vijesti* were attacked by the Mayor and his son. One person was convicted in connection with this case, but irregularities in the police investigation were noted.[14] In September 2010, five journalists working for *Vijesti*, including Mr. Ivanović, received death threats in letters addressed to them individually. Although the police indicated that they had undertaken "intensive activities on resolving the case",[15] no suspects have been identified.

31. In March 2012, journalist Olivera Lakić, also working for *Vijesti*, was physically assaulted in front of her house in the centre of Podgorica. Ms. Lakić had written a series of articles on the illegal production of cigarettes in the northern town of Mojkovac and had been receiving threats for over a year. She was granted police protection after the incident and one person identified as the attacker was convicted.[16] However, the motives for the attack were never fully clarified and she was obliged to stop her activities as an investigative journalist. The suspected involvement of public officials in the threats against the journalist was not fully clarified either.

32. As indicated in his thematic report on the protection of journalists,[17] for the Special Rapporteur an attack against a journalist is not only relevant as an obvious violation of the rights of an individual to impart information, but it also undermines the rights of society at large to seek and receive information. Moreover, he considers that the failure to undertake effective investigations and to prosecute those responsible for attacks against journalists is key to the occurrence of new violent episodes which may end in the undermining of the work of the entire press.

33. The Human Rights Council recently emphasized the vital importance of the safety of journalists through its resolution 21/12. States condemned all attacks against journalists in the strongest terms and expressed their concern at the impunity of this violence. States also committed to promote a safe and enabling environment for journalists to perform their work

[13] "Prosecution of attacks on journalists in Montenegro" (footnote 6 above), p. 15.
[14] Ibid., pp. 18–21.
[15] Ibid., p. 22.
[16] Ibid., pp. 22–27.
[17] A/HRC/20/17, para. 54.

independently and without undue interference, including by means of (a) legislative measures; (b) awareness-raising in the judiciary, law enforcement officers and military personnel, as well as journalists and civil society, regarding international human rights and humanitarian law obligations and commitments relating to the safety of journalists; (c) the monitoring and reporting of attacks against journalists; (d) publicly condemning attacks; and (e) dedicating necessary resources to investigate and prosecute such attacks.

34. The Special Rapporteur notes with appreciation that the Montenegrin authorities openly recognize the need to address concerns about the safety of journalists as a matter of priority and for openness to debate all possible solutions to this serious issue. In the last national report for their second cycle during the universal periodic review process, the authorities included addressing the impunity of past assaults on journalists as a key challenge for the country.[18] Six recommendations accepted by Montenegro in the review process also directly related to the safety of journalists and the media.

35. The Special Rapporteur was pleased to learn that in November 2013, the Ministry of the Interior established an 11-member commission for monitoring investigations into attacks on journalists. The group includes six representatives from the State Prosecutor's Office, Police Administration and Agency for National Security, four journalists – including its chair, the Assistant Chief Editor of *Dan* – and a representative of civil society. He considers that the careful review of past cases of violence against journalists that remain unresolved is not only relevant to the clarification of these cases, but could also inform the adoption of additional measures aiming at the prevention of future attacks. In particular, it is essential to fully clarify suspicions about the involvement of police or other State authorities in all situations of insecurity.

36. Besides his concern over the impunity of a large number of attacks against journalists, the Special Rapporteur is very disturbed by reports on the use of inflammatory statements by some authorities and political leaders against journalists and the media that have been critical of them. For example, political leaders have reportedly referred to some media groups as being disloyal to the country, and have even predicted the imminent closure of these media outlets.[19] The Special Rapporteur also received information on verbal harassment and physical aggression of journalists attending political rallies. For example, on 8 August 2012 *Dan* journalist Lidija Nikčević attended a political party meeting in Nikšić where she was verbally and physically attacked.[20] In addition, two other journalists were reportedly assaulted in another political gathering on 4 October 2012.[21]

37. In the view of the Special Rapporteur, if the atmosphere of intimidation and violence against journalists is to end, besides taking bold measures to finally ensure accountability in all recorded cases of violence, it is imperative that Montenegrin politicians not only refrain from using inflammatory rhetoric against the press that is critical of them, but also openly voice their full support for the independence of the media, publicly condemning any form of attack against journalists.

[18] A/HRC/WG.6/15/MNE/1, paras. 78–79.

[19] Monitor Online: "Montenegro: Media and Freedom of Expression, Regular Report 2013," 22 January 2014.

[20] Ibid.

[21] Ibid., p. 20.

2. Defamation

38. Laws establishing the crime to defame, insult, slander or libel someone or something represent a traditional threat to freedom of expression.[22] Therefore, the Special Rapporteur notes with appreciation that in 2011 the criminal offences defined in articles 195 (insult) and 196 (libel) of the Penal Code of Montenegro have been deleted. Redress in these cases can now be found only through civil procedures. In June 2012 a Law on Amnesty of Persons Convicted of Insult and Libel was adopted reversing the effects of the sentencing of those previously convicted of the criminal offences of insult and libel. He also welcomes the adoption by the Supreme Court of a Principal Legal Position which establishes that pecuniary compensation for liability in defamation cases should be in line with European standards as interpreted by the European Court of Human Rights and that the amount of the compensation does not discourage journalists and the media from exercising their professions.

39. A study has noted that, despite huge progress in legislation, close monitoring of the court system is needed to ensure that standards used by the European Court of Human Rights are fully implemented and to discourage frivolous and politically motivated lawsuits.[23]

40. A disproportionately high number of initiatives against media enterprises that are considered to be critical of the authorities were noted by civil society and the media, in particular the daily newspapers, *Vijesti* and *Dan* and the weekly *Monitor*.[24] Another review indicated that at the end of 2012, there were over 30 complaints pending against the daily newspaper *Dan*, with claims amounting to over 1 million euros; 23 complaints amounting to almost 2 million euros against *Vijesti*, and nine cases against the weekly newspaper *Monitor*, amounting to 200,000 euros.[25]

41. In this regard, the Special Rapporteur recalls how important it is for the authorities to respect the freedom of the media to investigate their activities and the need to take measures to prevent the use of judicial instruments to intimidate critical voices in the press. Notably, in a case relating to Montenegro, the European Court of Human Rights has already held that: "Senior civil servants acting in an official capacity are subject to wider limits of acceptable criticism than private individuals."[26]

42. Despite the Supreme Court decision to limit compensation in line with international standards, concerns remain with regard to the possibility of imposition of excessive monetary awards by civil courts, particularly considering the levels of payment of local journalists (compensation may amount to 14,000 euros when the average annual wage is less than this).[27] The recurrent use of courts against certain media also threatens the economic capacity of these vehicles.

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[22] United Nations Special Rapporteur on the right to freedom of opinion and expression, the OSCE Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur for Freedom of Expression and the African Commission on Human and Peoples' Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, Tenth anniversary joint declaration: ten key challenges to freedom of expression in the next decade (2010).

[23] "Independent legal mission to study press freedom in Montenegro" (see footnote 5 above), p. 2.

[24] Ibid., p. 23.

[25] See footnote 3 above.

[26] Šabanović *v.* Montenegro and Serbia, application No. 5995/06 (Strasbourg, France, 31 May 2011).

[27] "Montenegro: submission to the UN universal periodic review" (footnote 4 above), p. 6.

43. In this regard, the Special Rapporteur notes with appreciation that another recent ruling of the European Court of Human Rights[28] was used as a reference by the Montenegrin Constitutional Court while reviewing a previous sentence of the Supreme Court. According to the decision by the European Court of November 2011, the amount of damages and costs imposed on the journalist Veseljko Koprivica by the Montenegrin Supreme Court was disproportionate to the legitimate aim served and thus in violation of article 10 of the European Convention on Human Rights.

3. Government interference in the media

44. The Media Law requires print media in Montenegro to be privately owned. Nevertheless, the State continues to own and fund the *Pobjeda* newspaper. Several attempts to privatize this daily paper have failed in the last few years. Its low daily circulation and high debt levels are reported to have discouraged bidders.

45. Continued Government ownership of this newspaper is particularly concerning as the editorial content of *Pobjeda* is widely regarded as having a pro-Government bias, including during electoral periods.[29] The extreme polarization that marks relations between media groups in the country (see also the subsection below) is often politicized by the perception of the use of *Pobjeda* as a vehicle to promote the work of the Government and to discredit media groups taking a critical view of the authorities[30] – for example, *Pobjeda* publicly reported what it considered to be examples of wrongdoing by people affiliated with *Vijesti* and *Monitor* (two of the main publications that maintain a critical tone against the ruling authorities).

46. The Special Rapporteur received complaints that the Government was unfairly subsidizing *Pobjeda* by directly and indirectly placing public advertising, and unduly controlling its editorial policies. A study showed that 91 per cent of all government advertising in the local print media was allocated to *Pobjeda*, although the *Pobjeda* management reported that this represented only 15 per cent of its revenues.[31] There were also complaints that a detailed assessment on the distribution of State resources among different media outlets was difficult as the Government failed to provide updated and disaggregated information on overall public expenditure on advertising.

47. As much as the Special Rapporteur appreciates the challenges involved in the transfer of *Pobjeda* to private hands, he considers that this move is urgently required to prevent further politicization of the media and to promote pluralism. Furthermore, the Special Rapporteur underscores the importance of ensuring full transparency and fair allocation of public resources in media activities, given the risk that these resources might become a tool for political pressure. As indicated in Human Rights Committee general comment No. 34 (2011): Care must be taken to ensure that systems of government subsidy to media outlets and the placing of government advertisements are not employed to the effect of impeding freedom of expression. Furthermore, private media must not be put at a disadvantage compared to public media in such matters as access to means of dissemination/distribution and access to news.[32]

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[28] Koprivica *v.* Montenegro (application No. 41158/09).

[29] OSCE/Office for Democratic Institutions and Human Rights (ODIHR), Montenegro, Presidential Election, 7 April 2013: Final Report, p. 16.

[30] "Independent legal mission to study press freedom in Montenegro" (see footnote 5 above), p. 23.

[31] Ibid., p. 15.

[32] CCPR/C/GC/34, para. 41.

48. In addition concerns were raised with regard to the lack of independence of the public broadcasting services. Reforms in the functioning of the public broadcaster were recently implemented with the reported aim of ensuring self-sustainability. However it was noted that professionalism and independence of the public broadcaster have not yet been fully achieved.[33] In this regard, the Special Rapporteur considers that Council of Europe recommendation No. R (96) 10 on the guarantee of the independence of public service broadcasting provides very useful guidance on the concrete requirements needed to ensure full editorial independence of public services.

49. Finally concerns exist with regard to the independence and capacity of the Agency for Electronic Media. In January 2013, amendments to the Law on Electronic Media established the requirement for the Agency to transfer any budget surplus to the State budget. Parliament also obliged the Agency to amend its financial plan for 2013. The Special Rapporteur considers that these measures can undermine the financial autonomy and capacity required of this regulatory body, exposing it to political interference.

4. Polarization of the media

50. In his meetings with media editors, journalists, civil society and government representatives, the Special Rapporteur was very concerned by the level of polarization that exists in the Montenegrin media. He was encouraged by the fact that all major media outlets agreed to attend a joint meeting organized during his visit with all media, but regrets the great level of animosity which disrupted the debate at times.

51. Montenegro has a relatively diverse media landscape, particularly considering the size of the country. However, media groups appear to be divided between those taking a critical position against the ruling authorities (particularly, the above-mentioned daily newspapers *Vijesti* and *Dan* and the weekly *Monitor*) and those taking a more supportive view.

52. Almost all interlocutors during the visit recognized that the great polarization and politicization of the media directly affected efforts towards self-regulation. In 2003 a code of ethics for journalists was adopted, but since then efforts to put in place a common self-regulatory body have failed. In March 2012, the Media Council for Self-Regulation was founded by representatives of 18 print, broadcasting and Internet media outlets in Montenegro. *Vijesti*, *Dan* and the weekly *Monitor* refused to join the process. In 2013 *Vijesti* established an ombudsman for its readers.

53. In the recent analysis of self-regulatory efforts it was noted that the existing mechanisms did not provide satisfactory responses.[34] The work of the existing bodies is neither well known nor publicized and the independence of these bodies from the owners of the media is not well ensured. The only active body, the Media Council for Self-Regulation appears to contradict the notion of self-regulation by focusing a great deal of attention on media outlets which are not affiliated to this entity: between 2012 and 2013 only 11 per cent of the violations reported by this body were committed by its members, the remaining 89 per cent were committed by non-members.[35]

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[33] See European Commission, Report from the Commission to the European Parliament and the Council on Montenegro's progress in the implementation of reforms (22 May 2012), p. 10.

[34] See Human Rights Action, Monitoring of journalistic self-regulatory bodies in Montenegro: first report (September 2012–March 2013) and second report (March 2013–October 2013).

[35] Ibid.: first report (September 2012–March 2013), p. 22.

54. The lack of success in self-regulatory efforts is aggravating concerns relating to the bad quality of some of the work done by the media. There have been complaints made, for example, with regard to the disclosure of the identity of children and incidents of hate speech. Despite regulations providing for a right of reply, it has also been alleged that some media have refused at times to acknowledge and publicly correct serious mistakes even after complaints had been made.

55. The Special Rapporteur recalls that the media is responsible for maintaining high professional and ethical standards through voluntary self-regulation. Furthermore he notes that the voluntary nature of regulatory efforts must be preserved to secure the necessary independence of the media. In this regard, he urges the media to engage in dialogue in order to either strengthen the existing self-regulating body, or at least, to establish an operative self-regulating mechanism of their individual choice.

56. The lack of solidarity in the highly polarized media landscape has additional consequences for the journalistic profession as a whole. Montenegro has several journalist associations (including the Association of Professional Reporters of Montenegro, the Association of Reporters of Montenegro, and the Society of Reporters of Montenegro). However, it was noted that those entities were mostly ineffective. The absence of a strong union to act on behalf of journalists is thought to undermine their capacity to bargain for improved wages and working conditions.[36]

5. Access to information

57. As indicated above, in line with international standards regarding the right to freedom of opinion and expression, Montenegro establishes the right to access information held by public authorities in its Constitution (art. 51). Montenegro reaffirmed its commitment to ensure the right to access information by signing the Council of Europe Convention on Access to Official Documents in 2009.

58. In February 2013 the Law on Free Access to Information entered into force in Montenegro. The Law enables people or legal entities to request access to information held in any form by State and local authorities, public companies, and other entities exercising public powers, subject to the exceptions noted in the Constitution. The Law also created a supervisory body called the Agency for the Protection of Personal Data and Free Access to Information.[37] This entity is mandated to act as an appeal body for access to information requests.

59. The establishment of obligations to proactively disclose information, of penalties in case the information is not issued rightfully and the establishment of a public entity mandated to process information requests were regarded as particularly positive advances in the new normative framework.

60. Despite these positive developments, concerns were expressed regarding the doubling of the deadline for responding for information requests and the prevalence of frequent excuses for secrecy established in other laws.[38] Civil society also indicated that despite the advances in legislation, a culture of secrecy was still frequently present among

[36] See *Media Sustainability Index 2012* available at: http://www.irex.org/system/files/u105/EE_MSI_2012_Montenegro.pdf.

[37] Law on Free Access to Information (2013), arts. 39–41.

[38] MANS, "Freedom of information in Montenegro", p. 4, available at:http://www.mans.co.me/en/wp-content/uploads/fai/FreedomOfInformation-Internship.pdf.

public entities. In 2012 an organization submitted over 7,000 requests for information and reported receiving 48 per cent of the documents requested.[39]

61. The Special Rapporteur received complaints that courts were not disclosing information on their activities and decisions adequately nor promptly. The European Union noted that most court decisions have become publicly accessible but are not published in a timely manner.[40] In March 2013, guidelines on access to information were adopted by the Supreme Court. The Special Rapporteur underlines that with very few exceptions, court cases are matters of public interest and must be open to public reporting. Similarly, but more importantly, all court verdicts must be published in their entirety, and only redacted in accordance with the relevant laws.

62. The Special Rapporteur has indicated, in his most recent report to the General Assembly (A/68/362), that the adoption of national laws on access to information should be understood as the first step in a broader process. Political will; an active civil society advocating and monitoring implementation of those norms; and overall respect for the rule of law are all essential components for the effective implementation of norms on access to information. In this regard, he understands that it is particularly vital to secure adequate support and full independence for the newly established Agency for the Protection of Personal Data and Free Access to Information so it can fully exercise its mandate as a catalyser for the implementation of the existing norms. The Agency should not only be capable of processing cases effectively, but should also publicly report on all its activities, enabling the general public to regularly assess overall institutional compliance with the law.

6. Incitement to hatred

63. The Constitution of Montenegro prohibits incitement to or instigation of hatred or intolerance on any ground, as well as any direct or indirect discrimination on any ground. The anti-discrimination law (2010) also specifies the mechanisms for protection against discrimination. The Media Law further establishes the prohibition of publishing information and opinions that incite to discrimination, hatred or violence against a person or a group of persons on the ground of their sexual orientation.

64. Given the ethnic and cultural diversity that marks Montenegrin society, it is critical to guarantee that all minorities have their right to expression protected and promoted. The Special Rapporteur notes with appreciation the reports on the financial support provided by the Ministry of Culture for the production of media content related to minorities and vulnerable groups. However, he underlines the fact that the allocation of public funds for any media or content production should be independently administered.

65. Despite the legal framework, episodes of discriminatory statements in the media and among the political leadership can be noted with some frequency and require dedicated attention. In 2011, the Committee on the Elimination of Discrimination against Women expressed concern at sex-discriminatory statements made by politicians and that the media often conveyed stereotyped and sometimes degrading images of women.[41] Discriminatory statements also target minority groups, such as the Roma, Ashkali and Egyptians (RAE) and lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals.

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[39] Ibid., p.5.

[40] European Commission, Report from the Commission to the European Parliament and the Council on Montenegro's progress in the implementation of reforms (2013), p. 36.

[41] CEDAW/C/MNE/CO/1, para. 16.

66. The Special Rapporteur received numerous reports on attacks against lesbian, gay, bisexual and transgender people. The European Union noted that activists defending the rights of sexual monitories are still exposed to discrimination; it also indicated that violence against LGBTI individuals continued to increase in the country with impunity, as attacks are rarely reported; and criminal offences of that type are not properly prosecuted.[42]

67. Attempts by the LGBT community to conduct peaceful demonstrations have been challenged by violence. In October 2013, it was reported that 2,000 police officers were deployed to ensure the safety of participants in a gay pride demonstration in Podgorica. In July, around 200 demonstrators clashed with police in the town of Budva as they tried to cross the blockade protecting 40 marchers calling for LGBT rights. Zdravko Cimbaljevic, the founder and director of the organization, LGBT Forum Progress, was granted asylum in Canada in November 2013 based on the assessment that Montenegro was unable to protect him, because the State Prosecutor's Office had failed to properly treat numerous cases of hatred and threats addressed against him in the country. A survey conducted in 2009 indicated that 70 per cent of the Montenegrin population considered homosexuality to be an illness.[43]

68. The Special Rapporteur welcomes the fact that the authorities have formally recognized the need to enhance measures to protect sexual minorities from discrimination and violence. He also notes with appreciation the inclusion in the national plan for implementation of the Law on Prohibition of Discrimination of initiatives to sensitize the media and to disseminate anti-discrimination messages through the media. Attention to the enforcement of national norms and to the implementation of sensitization strategies will be crucial in promoting a shift in the recurrent disturbing levels of hostility against the LGBT community. Moreover, beyond formal announcements, it is essential to have the country's authorities publicly state their open rejection of all forms of incitement to hatred, in particular hate messages targeting sexual minorities.

7. Restrictions on public demonstrations

69. Although protected by the Constitution, public demonstrations have been reportedly prevented or unduly restricted by the authorities in Montenegro. The Public Assembly Act establishes that the competent authority (the police) may prohibit a peaceful assembly if it has not been properly notified. However, concerns were noted at the conversion of the requirement for notification into a de facto authorization process. In 2010, it was reported that the Montenegrin Police Directorate had rendered 78 decisions prohibiting a peaceful assembly by invoking the Public Assembly Act in order to prevent risks to traffic safety and to the movement and work of a larger number of citizens.[44] Civil society organizations are challenging the constitutionality of these legal restrictions to demonstrations.

70. The Special Rapporteur notes that the right to freedom of expression includes all forms that persons can choose to express their views and opinions. This includes the right to conduct peaceful demonstrations. In this regard, he expresses concern at the repeated decisions prohibiting demonstrations and urges the Montenegrin police to make greater efforts to manage traffic around demonstrations, and address any other security concerns that may exist, in order to ensure that restrictions to this constitutional right occur only on exceptional occasions.

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[42] European Commission (see footnote 40 above).

[43] COWI/Danish Institute for Human Rights, "Study on homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity", para. 70.

[44] Human Rights Action, *Human Rights in Montenegro, 2010–2011*, p. 40.

VI. Conclusions and recommendations

71. The Special Rapporteur is encouraged by the openness to dialogue demonstrated by the Montenegrin authorities when discussing the concerns described in the present report. He notes that Montenegro repeatedly stated its commitment to ensure the realization of the right to freedom of opinion and expression as established by international standards and recognized that, in that context, important steps had already been taken to improve legislation and institute policy guidance. However, a number of obstacles continue to undermine the complete translation of the commitments stated into practice.

72. Despite pledges to ensure the safety of the press, the continued impunity of notorious cases of violence against journalists perpetuates a sense of insecurity which can frequently intimidate the media in the country. This feeling is further aggravated by the perception that investigative journalists and media enterprises that are regarded as critical of the Government seem to be disproportionately victimized by attacks.

73. Commitments to promote pluralism and the quality of the media seem to be affected by extremely high levels of polarization among media outlets. In particular, the direct involvement of the Government as the owner of a printed newspaper and the constant clashes between authorities and some media outlets have resulted in the frequent politicization of the work of the media. Similarly, the progress represented by the decriminalization of defamation may be undermined if courts continue to implement excessive fines and fail to stop frivolous litigation.

74. Progress in the adoption of norms protecting against all forms of discrimination has its impact limited by the failure to protect groups particularly targeted by discriminatory statements such as the LGBT community. In particular, anti-discrimination efforts may be easily undermined if political authorities not only fail to publicly condemn all forms of discrimination, but also occasionally resort to some sort of discriminatory remark in their own political statements.

75. In this regard, the Special Rapporteur proposes the following recommendations.

1. Ensure the protection of journalists and the media against violence

76. The identification of responsibilities in all cases of violence and intimidation against journalists must be achieved without delay, so perpetrators are brought to justice. In particular, adequate resources must be provided to ensure that the recently established commission for monitoring investigations into attacks on journalists fully succeeds in its task. Specific attention must be given to the clarification of the potential direct or indirect involvement of the authorities or public officials in all episodes of violence.

77. The authorities should value the work of the investigative press in their statements and refrain from attacking it. Particular attention must be paid to ensuring accountability in episodes of violence against the press by members of political parties.

2. Ensure courts adequately apply international standards regarding defamation

78. The work of Montenegrin courts that are implementing the new national norm for defamation must be closely monitored to ensure that complaints of defamation are not used to intimidate the press. Courts must be systematically made aware of

international standards relating to the imposition of penalties for defamation. The authorities must respect the freedom of the media to investigate their activities and refrain from using judicial instruments on defamation to intimidate critical voices in the press.

3. Prevent Government interference in the media

79. **The Government must urgently conclude the transfer of *Pobjeda* to private hands, as its continued ownership of this daily newspaper and the perceived political bias in its editorial line contribute to the politicization of the national media. The Government should also ensure full transparency with regard to the allocation of public resources in advertising by guaranteeing their fair distribution across all media. The autonomy and full independence of the public broadcasting services and of the Agency for Electronic Media must be ensured on a permanent basis.**

4. Overcome media polarization and support all efforts to promote self-regulation

80. **A better dialogue among all media outlets is essential to permit a more objective discussion on the challenges faced by this vital sector. All media groups must be stimulated to voluntarily take part in self-regulatory initiatives, to pay particular attention to the elimination of discriminatory remarks and to improving the quality of the work currently being developed. To be effective, self-regulatory bodies must have their work well publicized among readers and viewers, so these may file complaints, if desired. The staff that support self-regulatory initiatives must have their independence from media owners preserved.**

5. Enhance access to information

81. **Adequate financial and human resources must be secured for the newly established Agency for the Protection of Personal Data and Free Access to Information so it can fully implement its mandate with autonomy and independence. The Agency should be capable of processing all requests effectively and also systematically report on institutional compliance with the law. Investments must be made to make civil society aware of the procedures for requesting information and to enhance the capacity of all public entities to comply with the law through technical support and training.**

6. Promote diversity and non-discrimination and ensure responses to all forms of incitement to hatred

82. **The State must actively promote the right to expression of minorities, ensuring the full independence of those benefiting from financial resources. Law enforcement authorities must fully implement national norms regarding the prohibition of discrimination on all grounds. Specific attention must be paid to the recurrently high levels of hostility against the LGBT community. In particular acts of aggression against this community must be fully investigated. The authorities must publicly express their complete rejection of all forms of incitement to hatred. Efforts to promote the self-regulation of the media should also play an important role in ensuring better protection against incitement to hatred through the media.**